



PATENT

Attorney Docket No. 09282.0044-00000
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Holger BOHLE) Group Art Unit: 3629
)
Application No.: 10/772,081) Examiner: Shaun D. SENSENIG
)
Filed: February 3, 2004) Confirmation No.: 1661
)
For: CURRICULUM MANAGEMENT SYSTEM)

Attention: Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER BOARD RULE § 41.37

In support of the Notice of Appeal filed November 5, 2009, and further to 37 C.F.R. § 41.37, Appellant presents this brief and encloses herewith a check for the fee of \$540.00 required under 37 C.F.R. § 1.17(c).

This Appeal is filed to appeal the rejections of claims 1-16 set forth in the Final Office Action mailed July 22, 2000 and the Advisory Action mailed October 20, 2009.

This Appeal Brief is being filed subsequent to the December 22, 2009, mailing of a Notice of Panel Decision from Pre-Appeal Brief Review. Pursuant to the Notice of Panel Decision, the time period for filing the Appeal Brief is reset to one month from the mailing date of the mailing date of the Notice, or the balance of the two-month time period running from receipt of the Notice of Appeal, whichever is greater. Thus, this Appeal Brief is timely filed before January 22, 2010, measured from the mailing date of the Notice of Panel Decision.

If any additional fees are required or if the enclosed payment is insufficient, Appellant requests that the required fees be charged to Deposit Account 06-0916.

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I. REAL PARTY IN INTEREST

The real party in interest is SAP AG, a corporation of Germany, the assignee of the entire right, title, and interest in the application.

II. RELATED APPEALS AND INTERFERENCES

There are currently no other appeals or interferences, of which Appellant, Appellant's legal representative, or Assignee is aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-16 are the subject of this appeal.

In the Final Office Action mailed July 22, 2009 (the "Final Office Action"), the Examiner took the following actions:

- i. rejected claims 9-16 under 35 U.S.C. § 101;
- ii. rejected claims 1-6 and 9-14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,692,125 to Schloss et al. ("*Schloss*");
- iii. rejected claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Schloss* in view of "The Columbia Institute e-Campus School Policy Manual, November 2002" ("*Columbia*"); and
- iv. rejected claims 8 and 16 under 35 U.S.C. § 103(a) as being unpatentable over *Schloss* in view of U.S. Patent No. 6,099,320 to Papadopoulos ("*Papadopoulos*").

In the Advisory Action mailed October 20, 2009 (the "Advisory Action"), the Examiner withdrew the rejection of claims 9-16 under 35 U.S.C. § 101, but maintained the rejections of claims 1-16 under 35 U.S.C. § 103(a).

The claims on appeal are set forth in Section IX entitled "Claims Appendix."

IV. STATUS OF AMENDMENTS

No claim amendments have been made subsequent to issuance of the Advisory Action. Appellant last filed an Amendment on October 7, 2009, which has been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention, as recited in independent claim 1, is directed to a computer program comprising a memory device storing instructions that, when executed by a processor, cause the processor to perform a method for managing a curriculum. The method comprises the steps, performed by the processor, of scheduling a booking of a course to be taken by a learner (see, e.g., specification, p. 4, ll. 28-29), wherein the scheduling comprises generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum (see, e.g., specification, p. 5, l. 24 - p. 6, l. 9); receiving input from the learner requesting a modification to the booking (see, e.g., specification, p. 5, ll. 9-16); determining whether the booking represents an individual booking or a curriculum booking based on the generated attendance link (see, e.g., specification, p. 6, ll. 8-9); and processing the modification to the booking based on at least whether the booking represents an individual booking or a curriculum booking (see, e.g., specification, p. 7, ll. 3-11).

The invention, as recited in independent claim 9, is directed to a computer-implemented method for managing a curriculum comprising scheduling a booking of a course to be taken by a learner (see, e.g., specification, p. 4, ll. 28-29), wherein the scheduling comprising generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum (see, e.g., specification, p. 5, l. 24 - p. 6, l. 9); receiving

input from the learner requesting a modification to the booking (see, e.g., specification, p. 5, ll. 9-16); determining whether the booking represents an individual booking or a curriculum booking based on at least the generated attendance link (see, e.g., specification, p. 6, ll. 8-9); and processing the modification to the booking based on whether the booking represents an individual booking or a curriculum booking (see, e.g., specification, p. 7, ll. 3-11).

VI. GROUNDS OF REJECTION

1. Claims 1-6 and 9-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schloss*;
2. Claims 7 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schloss* in view of *Columbia*; and
3. Claims 8 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schloss* in view of *Papadopoulos*.

VII. ARGUMENT

A. Introduction

Each claim of this patent application is separately patentable and, upon issuance of a patent, will be entitled to a separate presumption of validity under 35 U.S.C. § 282. For convenience in handling this appeal, however, the claims will be grouped as follows. All of the claims do not stand or fall together.

1. With respect to the rejection of claims 1-6 and 9-14 under 35 U.S.C. § 103(a), claims 1-6 stand or fall together, and claims 9-14 stand or fall together.

2. With respect to the rejection of claims 7 and 15 under 35 U.S.C. § 103(a), claim 7 stands or falls on its own, and claim 15 stands or falls on its own.

3. With respect to the rejection of claims 8 and 16 under 35 U.S.C. § 103(a), claim 8 stands or falls on its own, and claim 16 stands or falls on its own.

B. Detailed Arguments

1. The Rejection of Claims 1-6 and 9-14 under 35 U.S.C. § 103(a) Should Be Reversed.

The rejection of claims 1-6 and 9-14 under 35 U.S.C. § 103(a) should be reversed, because the Examiner's rejection contains clear error and a *prima facie* case of obviousness has not been established.

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. ... [R]ejections on obviousness cannot be sustained with mere conclusory statements." M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation omitted). "The mere fact that references can be combined or modified does not render the resultant

combination obvious unless the results would have been predictable to one of ordinary skill in the art.” M.P.E.P. § 2143.01(III) (emphasis in original). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I) (emphases in original).

“[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). ... The factual inquiries ... [include determining the scope and content of the prior art and] ... [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III). Here, no *prima facie* case of obviousness has been established, for at least the reasons that the Final Office Action fails to properly determine the scope and content of the prior art, and further fails to properly ascertain the differences between the prior art and the claimed combinations.

Independent claim 1 calls for a combination including, for example, “determining whether [a] booking represents an individual booking or a curriculum booking” and “processing [a] modification to the booking based on at least whether the booking represents an individual booking or a curriculum booking” (emphases added). The Examiner alleged that *Schloss* teaches these elements. Final Office Action, p. 4. However, this is not correct.

Specifically, the Examiner cited column 11, lines 9-12 of *Schloss* for support of this allegation, asserting that *Schloss* teaches “check[ing] to see if there are any subsequent connected events and processes accordingly.” Final Office Action, p. 4. Even if *Schloss* could be reasonably argued to present this teaching, which Appellant does not concede, the “checking” steps of *Schloss* are not performed when modifying an event or events; rather, they are performed “at scheduling time to schedule an event group 260 or event 210.” *Schloss*, col. 10, ll. 63-65, see, also, col. 11, ll. 9-24. The portion of *Schloss* cited by the Examiner has nothing to do with a “modification” process.

In addition, when asserting that *Schloss* teaches “determining whether the booking represents an individual booking or a curriculum booking,” the Examiner also cited column 11, lines 9-12 of *Schloss* as support, alleging that *Schloss* teaches “check[ing] to see if the first event has any subsequent connected events: [NO] would show an individual booking and [YES] would show a curriculum booking.” Final Office Action, p. 4. Even if this allegation were correct, which Appellant does not concede, *Schloss* does not use such a checking result to modify an event.

In fact, even if *Schloss* could be reasonably argued to teach modifying an event or events, which Appellant does not concede, *Schloss* specifies that whether to perform any such modifications is based, not on characteristics of a booking, as included in claim 1, but rather on whether one or more “dynamic conditions” are satisfied. *Schloss*, Abstract. Further, *Schloss* teaches that “dynamic conditions” are “data value ranges” (*Schloss*, col. 2, l. 38), and particularly that “[d]ynamic conditions are conditions (and/or data) that can vary between the schedule time 251 and the performance time (256,

277). Typically, whether the dynamic condition is satisfied or not can not be determined until close to performance time" (*Schloss*, col. 4, ll. 61-65, emphases added). *Schloss* also presents some examples of dynamic conditions such as safety concerns and lack of resources. See, e.g., *Schloss*, col. 10, ll. 37-43. The checking results discussed in column 11, lines 9-12 of *Schloss* (and alleged by the Examiner as corresponding to the claimed "individual booking" and "curriculum booking"), which are obtained "at scheduling time to schedule an event group 260 or event 210" (*Schloss*, col. 10, ll. 63-65, emphasis added), are not dynamic conditions. Accordingly, even if *Schloss* taught "modifications," which Appellant does not concede, no such "modifications" are performed based on whether the event is "individual booking" or "curriculum booking."

In view of the above, *Schloss* does not teach or suggest at least "processing the modification to the booking based on at least whether the booking represents an individual booking or a curriculum booking" as recited in claim 1 (emphases added).

Moreover, independent claim 1 calls for a combination also including, for example, "scheduling a booking of a course to be taken by a learner, wherein the scheduling comprises generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum" and "determining whether the booking represents an individual booking or a curriculum booking based on the generated attendance link." *Schloss* also fails to teach or suggest these elements.

The Examiner conceded that *Schloss* "does not explicitly disclose wherein a link is created to associate the user with the event and event information . . . [and] does not explicitly disclose using the link to determine whether the booking represents an

individual booking or a curriculum booking.” Final Office Action, pp. 5-6. However, the Examiner then alleged that “it would have been obvious to one of ordinary skill in the art, at the time of the invention to have included” the above-noted features. See Final Office Action, pp. 5-6. As support for this allegation, the Examiner cited the *KSR* decision, quoting that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” Final Office Action, p. 5 and p. 6.

However, the proposition cited by the Examiner is not applicable, for at least the reason that the Examiner has not demonstrated that the elements sought to be combined are “known.” Accordingly, Appellant notes that MPEP § 2144.03 states, “If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.” Appellant submits that the Examiner has made a generalized statement without any documentary evidence to support it. Appellant traverses the Examiner’s apparent taking of “Official Notice,” noting the impropriety of this action, as the Federal Circuit has “criticized the USPTO’s reliance on ‘basic knowledge’ or ‘common sense’ to support an obviousness rejection, where there was no evidentiary support in the record for such a finding.” See *id.* Appellant submits that the Examiner failed to provide the required “explicit basis on which the examiner regards the matter as subject to official notice and allow Applicants to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.” See MPEP § 2144.03.

Therefore, the Examiner has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the combination recited in independent claim 1. Moreover, the Examiner has established no motivation for one of ordinary skill in the art to modify the teachings of the reference to achieve the claimed combinations. Thus, no reason has been clearly articulated as to why claim 1 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 1, and claim 1 is allowable over *Schloss*.

Independent claim 9, although different in scope from independent claim 1, recites similar elements and is therefore also allowable over *Schloss* for at least reasons similar to those set forth above for independent claim 1.

Claims 2-6 and 10-14 are also allowable at least by virtue of their dependence from independent claim 1 or 9.

Therefore, Appellant requests that the improper rejection of claims 1-6 and 9-14 under 35 U.S.C. § 103(a) be reversed.

2. The Rejection of Claims 7 and 15 under 35 U.S.C. § 103(a) Should Be Reversed.

The rejection of claims 7 and 15 under 35 U.S.C. § 103(a) should be reversed, because the rejection also contains clear error, and a *prima facie* case of obviousness has not been established.

Claims 7 and 15 depend respectively from claims 1 and 9, and thus include all the elements thereof. As discussed above, *Schloss* fails to disclose or suggest at least “scheduling a booking of a course to be taken by a learner, wherein the scheduling

comprises generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum,” “determining whether the booking represents an individual booking or a curriculum booking based on the generated attendance link,” and “processing the modification to the booking based on at least whether the booking represents an individual booking or a curriculum booking,” as recited in claim 1 (with similar elements recited in claim 9) and included in dependent claims 7 and 15. *Columbia* also fails to teach or suggest the above-noted elements and thus does not cure the deficiencies of *Schloss*.

Therefore, the Examiner has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the combinations of claims 7 and 15. Moreover, there is no motivation for one of ordinary skill in the art to modify the teachings of the references to achieve the claimed combinations. Thus, no reason has been clearly articulated as to why claims 7 and 15 would have been obvious to one of ordinary skill in the art in view of the prior arts.

Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 7 and 15, and the Appellant requests that the improper rejection of claims 7 and 15 under 35 U.S.C. § 103(a) be reversed.

3. The Rejection of Claims 8 and 16 under 35 U.S.C. § 103(a) Should Be Reversed.

The rejection of claims 8 and 16 under 35 U.S.C. § 103(a) should be reversed, because the rejection also contains clear error and a *prima facie* case of obviousness has not been established.

Claims 8 and 16 depend respectively from claims 1 and 9, and thus include all the elements thereof. As discussed above, *Schloss* fails to disclose or suggest at least “scheduling a booking of a course to be taken by a learner, wherein the scheduling comprises generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum,” “determining whether the booking represents an individual booking or a curriculum booking based on the generated attendance link,” and “processing the modification to the booking based on at least whether the booking represents an individual booking or a curriculum booking,” as recited in claim 1 (with similar elements recited in claim 9) and included in dependent claims 8 and 16. *Papadopoulos* also fails to teach or suggest the above-noted elements and thus does not cure the deficiencies of *Schloss*.

Therefore, the Examiner has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the combinations of claims 8 and 16. Moreover, there is no motivation for one of ordinary skill in the art to modify the teachings of the references to achieve the claimed combinations. Thus, no reason has been clearly articulated as to why claims 8 and 16 would have been obvious to one of ordinary skill in the art in view of the prior arts.

Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 8 and 16, and the Appellant requests that the improper rejection of claims 8 and 16 under 35 U.S.C. § 103(a) be reversed.

VIII. CONCLUSION

For at least the reasons set forth above, pending claims 1-16 are allowable.

Appellant respectfully requests that the Board reverse the Examiner's rejections.


To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 11, 2010

By:


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IX. CLAIMS APPENDIX

Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)

1. A computer program comprising a memory device storing instructions that, when executed by a processor, cause the processor to perform a method for managing a curriculum, the method comprising the steps performed by the processor of:
 - scheduling a booking of a course to be taken by a learner, wherein the scheduling comprises generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum;
 - receiving input from the learner requesting a modification to the booking;
 - determining whether the booking represents an individual booking or a curriculum booking based on the generated attendance link; and
 - processing the modification to the booking based on at least whether the booking represents an individual booking or a curriculum booking.
2. The computer program product of claim 1, wherein:
 - the modification comprises re-booking the course; and
 - processing the modification comprises not re-booking the course when the booking represents a curriculum booking.
3. The computer program product of claim 1, wherein:
 - the modification comprises re-booking the course; and

processing the modification comprises, when the booked course
represents an individual booking:

performing a consistency check with respect to other
courses in the curriculum; and

re-booking the course based on an outcome of the
consistency check.

4. The computer program product of claim 1, wherein:

the modification comprises canceling the course; and

processing the modification comprises not canceling the course when the
booking represents a curriculum booking.

5. The computer program product of claim 1, wherein:

the modification comprises canceling the course; and

processing the modification comprises, when the booking represents a
curriculum booking:

canceling the course;

identifying one or more additional courses within the
curriculum for which bookings are invalidated by
canceling the course; and

canceling each of the identified additional courses.

6. The computer program product of claim 1, wherein:

the modification comprises canceling the course;

the course belongs to a sequence of courses within the curriculum; and

processing the modification comprises, when the booking represents a curriculum booking:

canceling the course;

identifying one or more additional courses within the curriculum that are later in the sequence of courses than the canceled course; and

canceling the identified additional courses that are later in the sequence than the canceled course.

7. The computer program product of claim 1, wherein:

the modification comprises a follow-up to the course; and

processing the modification comprises, when the booking is a curriculum booking:

not performing the follow-up to the course until the curriculum has been completed.

8. The computer program product of claim 1, wherein:

the modification comprises a follow-up to the course; and

processing the modification comprises, when the booking is a curriculum booking:

performing the follow-up to the course even if the curriculum has not been completed.

9. A computer-implemented method for managing a curriculum comprising:

scheduling, using a processor, a booking of a course to be taken by a learner, wherein the scheduling comprising generating an attendance link that associates the learner with the course, the attendance link identifying whether the course is associated with a corresponding curriculum;

receiving, using a processor, input from the learner requesting a modification to the booking;

determining, using a processor, whether the booking represents an individual booking or a curriculum booking based on at least the generated attendance link; and

processing, using a processor, the modification to the booking based on whether the booking represents an individual booking or a curriculum booking.

10. The method of claim 9, wherein:

the modification comprises re-booking the course; and

processing the modification comprises not re-booking the course when the booking represents a curriculum booking.

11. The method of claim 9, wherein:

the modification comprises re-booking the course; and

processing the modification comprises, when the booked course represents an individual booking:

performing a consistency check with respect to other courses in the curriculum; and

re-booking the course based on an outcome of the
consistency check.

12. The method of claim 9, wherein:

the modification comprises canceling the course; and
processing the modification comprises not canceling the course when the
booking represents a curriculum booking.

13. The method of claim 9, wherein:

the modification comprises canceling the course; and
processing the modification comprises, when the booking represents a
curriculum booking:
canceling the course;
identifying one or more additional courses within the
curriculum for which bookings are invalidated by
canceling the course; and
canceling each of the identified additional courses.

14. The method of claim 9, wherein:

the modification comprises canceling the course;
the course belongs to a sequence of courses within the curriculum; and
processing the modification comprises, when the booking represents a
curriculum booking:
canceling the course;

identifying one or more additional courses within the
curriculum that are later in the sequence of courses
than the canceled course; and
canceling the identified additional courses that are later in
the sequence than the canceled course.

15. The method of claim 9, wherein:

the modification comprises a follow-up to the course; and
processing the modification comprises, when the booking is a curriculum
booking:

not performing the follow-up to the course until the
curriculum has been completed.

16. The method of claim 9, wherein:

the modification comprises a follow-up to the course; and
processing the modification comprises, when the booking is a curriculum
booking:

performing the follow-up to the course even if the curriculum
has not been completed.

X. EVIDENCE APPENDIX

NONE

XI. RELATED PROCEEDINGS APPENDIX

NONE